

To: Allnutt, David[Allnutt.David@epa.gov]; Anderson, Kate[Anderson.Kate@epa.gov]; Anderson, Steve[Anderson.Steve@epa.gov]; Bahk, Benjamin[Bahk.Benjamin@epa.gov]; Berckes, Nicole[Berckes.Nicole@epa.gov]; Bernota, Carolyn[Bernota.Carolyn@epa.gov]; Bruce, Susan[Bruce.Susan@epa.gov]; Bufill, Lourdes[Bufill.Lourdes@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Connolly, Chris[Connolly.Chris@epa.gov]; Cozad, David[Cozad.David@epa.gov]; Cross, Verna[Cross.Verna@epa.gov]; King, Carol[King.Carol@epa.gov]; Denton, Loren[Denton.Loren@epa.gov]; Dierker, Carl[Dierker.Carl@epa.gov]; Dolph, Becky[Dolph.Becky@epa.gov]; Drelich, David[Drelich.David@epa.gov]; Eichenwald, Carl[Eichenwald.Carl@epa.gov]; Faeth, Lisa[Faeth.Lisa@epa.gov]; Frey, Bert[frey.bertram@epa.gov]; Garvey, Mark[Garvey.Mark@epa.gov]; Greenwald, Kathryn[Greenwald.Kathryn@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Hartman, Deborah[Hartman.Deborah@epa.gov]; Herrema, Jeffrey[Herrema.Jeffrey@epa.gov]; Hill, Elizabeth[Hill.Elizabeth@epa.gov]; Isales, Lydia[Isales.Lydia@epa.gov]; Joffe, Brian[Joffe.Brian@epa.gov]; Kairis, Mindy[Kairis.Mindy@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Kausch, Jeannine[Kausch.Jeannine@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Lott, Don[Lott.Don@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Mallory, Brenda[Mallory.Brenda@epa.gov]; Matthews, Keith[Matthews.Keith@epa.gov]; Mclean, Kevin[Mclean.Kevin@epa.gov]; Meeks, Marguerite[Meeks.Marguerite@epa.gov]; Milan, Sherry[Milan.Sherry@epa.gov]; Morgan, Jeanette[Morgan.Jeanette@epa.gov]; Morrissey, Alan[Morrissey.Alan@epa.gov]; Mosley, Brenda[Mosley.Brenda@epa.gov]; Moyer, Robert[Moyer.Robert@epa.gov]; Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Murray, Suzanne[Murray.Suzanne@epa.gov]; Nanda, Sushila[Nanda.Sushila@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]; Phillips, Ginny[Phillips.Ginny@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]; Porter, Amy[Porter.Amy@epa.gov]; Rog, Morgan[Rog.Morgan@epa.gov]; Rose, Cheryl[Rose.Cheryl@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Seltzer, Mark[Seltzer.Mark@epa.gov]; Shah, Aakruti[Shah.Aakruti@epa.gov]; Silver, Meg[Silver.Meg@epa.gov]; Stern, Allyn[Stern.Alyn@epa.gov]; Sullivan, Greg[Sullivan.Greg@epa.gov]; Swan, Russell[Swan.Russell@epa.gov]; Tierney, Cate[Tierney.Cate@epa.gov]; Walker, Mike[Walker.Mike@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Wilson, Kim[Wilson.Kim@epa.gov]; OGC PTSLO[OGC_PTSLO@epa.gov]; Abramson, Jennifer[Abramson.Jennifer@epa.gov]; Kaul, Monisha[Kaul.Monisha@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]

From: Turley, Jennifer

Sent: Mon 3/3/2014 4:01:27 PM

Subject: Pesticides & Toxic Substances Law News for March 3, 2014



<http://theorganicsinstitute.com/wp-content/uploads/2012/04/Tractor-spraying-pesticide-128Kb.jpg> **Pesticides & Toxic Substances Law News**

for March 3, 2014

Insurance

**Intentional Discharge Bars Coverage
Even if Toxicity Was Unknown, Court Rules**

A policy holder that intentionally discharged a pollutant can't invoke the "sudden and accidental" exception to a pollution exclusion even if the discharge was legal and it was unaware of the pollutant potential of the substance...

Toxic Substances

**Chemical Manufacturers, Advocacy Groups
Sharply Split in Early Reaction to TSCA Bill**

Chemical manufacturers and environmental health organizations are sharply split in their early reactions to draft legislation that would update the Toxic Substances Control Act, with manufacturers generally supportive and environmental...

Toxic Substances

**Revised EU Prior Informed Consent Law
For Most Hazardous Chemicals Takes Effect**

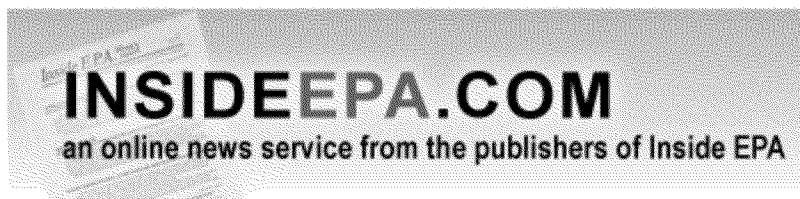
A European Union regulation that modifies the prior informed consent (PIC) rules for the export of the most hazardous chemicals takes effect March 1 in the 28-country bloc....

Toxic Substances

West Virginia Officials Want Testing

Of MCHM by Centers for Disease Control

West Virginia's political leaders want the Centers for Disease Control and Prevention to step up research into the health effects of 4-methylcyclohexane methanol (MCHM), which recently fouled drinking water for 300,000 state residents....



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CHEMICALS:

Enviros slam Shimkus reform plan, calling it a 'gross disappointment'

Jason Plautz, E&E reporter

Published: Friday, February 28, 2014

Although a key House Republican calls his proposal for overhauling the federal chemical reviews a step up over the status quo and a stalled Senate bill, green groups

are warning that Illinois Rep. John Shimkus' draft plan looks like more of the same.

"The bill is a gross disappointment," said Natural Resources Defense Council senior attorney Daniel Rosenberg. "It purports to reform TSCA but would do more harm than good."

Shimkus last night revealed a draft plan for overhauling the 1976 Toxic Substances Control Act. His "[Chemicals in Commerce Act](#)" would require that EPA test chemicals in commerce, categorize them as low or high priority and potentially restrict or regulate the most dangerous ones ([E&E Daily](#), Feb. 28).

The draft language is meant to kick off a House discussion of TSCA reform, which will continue with at least one hearing in the Energy and Commerce Committee on the bill next month before legislative text is officially written.

Industry officials say they are pleased with the draft as written so far. In an interview, Dan Newton, senior manager for the Society of Chemical Manufacturers and Affiliates, said the group was "very pleased" with the bill, especially for its hands-off approach to the new chemicals process and for strengthening testing while maintaining business interests and protecting confidential information.

But environmental groups, which say that current law leaves EPA with too little power to test and regulate potentially harmful chemicals, say that Shimkus' bill will require extensive rewrites before they can offer their support.

"This bill would do nothing whatsoever to protect the public from the health impacts of toxic chemicals and would instead roll back the very limited oversight that we currently have," said Andy Igrejas, president of Safer Chemicals, Healthy Families. "It lacks credibility except as a political statement for corporate supporters in an election year. Anyone who cares about the health impacts of chemicals on American families will forcefully oppose this legislation."

They are negatively comparing the draft to a bipartisan Senate bill from Sens. David Vitter (R-La.) and the late Frank Lautenberg (D-N.J.), which has 25 bipartisan co-sponsors but has been stalled since the summer in rewrites to address concerns of green groups and key Democrats, including Environment and Public Works Chairwoman Barbara Boxer (Calif.).

Particularly of concern is that the bill keeps the current safety standard of "unreasonable risk" for EPA to regulate chemicals. That standard, Igrejas said, has been a "cost-benefit analysis" rather than a health- or risk-based analysis that has led to too little regulation. EPA Assistant Administrator for Chemical Safety Jim Jones previously told House members that the standard as written created confusion about how to define risk.

Shimkus said yesterday that the safety standard was one area that could be discussed as the bill moves forward, although industry groups have backed that aspect of the bill.

Another sticking point will be the way the draft treats state laws, which would be pre-empted by federal action once a final decision is taken (either a designation that a chemical is a low priority or that it is a high priority but safe, or a restriction or rule is taken). That, advocates say, would end up blocking stronger protections from states like California and Washington and would leave little recourse for an EPA rule that falls short.

"Advocates for states' rights have to be scratching their heads today," said Ansje Miller, Eastern states director of the Center for Environmental Health. "Is Congressman Shimkus, one such advocate, really suggesting that the states should no longer have the right to set their own public health standards?"

Environmentalists have also warned that the draft bill would have little recourse once a bill was categorized as a low priority, since that is deemed a final decision. There would be little opportunity for EPA to re-examine a chemical or for a state to intervene if new risk evidence was presented.

American Chemistry Council President Cal Dooley yesterday said he backed the bill, and other industry groups have also fallen into support. The American Cleaning Institute said in a statement that "a strengthened TSCA has the potential to promote even greater innovation in the development of evermore sustainable cleaning products."

Trade groups -- which will meet next week in Baltimore for an annual conference expected to be buzzing with talk of the bill -- have also said that the bill would protect confidential business information while also freeing up more opportunities for state and medical groups to obtain confidential information in an emergency.

They've also praised the bill for maintaining current procedure on new chemicals, a process they say has helped innovation. Green groups, however, are looking for more upfront testing and safety restrictions before a chemical can reach market or be used in a new way and have said the bill falls short.

Shimkus has said the draft language is designed to attract input from a range of stakeholders and fellow lawmakers before a final bill is written with the goal to have a bipartisan bill for markup in April.

Energy and Commerce ranking member Henry Waxman (D-Calif.) has said that he won't support the bill in its current form, saying it "would weaken current law and endanger public health."

"However, bipartisan discussions have started, and I'm hopeful that the draft can be significantly modified to provide the kind of reform that American families want," Waxman said in a statement. "It will be a lot of work, but I am willing to engage with the proponents of this legislation to determine if we can craft legislation that will protect public health and the environment while ensuring workability for industry."

CHEMICALS:

Judge rules in favor of EPA in lawsuit over illegal dumping

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U.S. EPA has won a lawsuit against two companies at the center of a chemical pollution case in Iowa.

Titan Tire Corp. and its subsidiary Dico Inc. were ordered to pay a combined \$4.6 million in penalties and fines for demolishing three contaminated buildings in Des Moines in 2007 and dumping the polychlorinated biphenyl-laden material at a nearby industrial site.

District Court Judge Robert Pratt wrote in his decision that Dico's behavior was "reprehensible."

"Dico did not even make an effort to determine whether any state or federal environmental requirements applied to the disposal of the building debris resulting from this demolition," Pratt wrote.

Titan Tire, which acquired Dico in 1993, claims not to have known that the disposed building materials contained dangerous chemicals linked to cancer. The company said it will appeal the ruling.

"The next time we're going to drag everything in," said Titan CEO Morry Taylor said. "We're going to give everybody an education on just what happened" (David Pitt, AP/San Francisco Chronicle, Feb. 26). -- **DB**

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